



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/172597

PRELIMINARY RECITALS

Pursuant to a petition filed March 9, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on April 26, 2016, at Madison, Wisconsin.

The issue for determination is whether the Department may recover BCP benefits that were overpaid for the petitioner for the March 2015 through May 2015 period.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED] Overpayment Spec.
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.

2. The Wisconsin Legislature and governor changed the Wisconsin Statutes so that “childless adults” under age 65 could be eligible for BCP, beginning until April 1, 2014, with family income at or below 100% of the federal poverty line. *See*, 2013 Wis. Act 116, pub. December 21, 2013.
3. The petitioner had private health insurance through [REDACTED] at all times relevant hereto in 2014 and 2015.
4. The petitioner is married. The couple’s gross income was well over 100% FPL in 2014 and 2015. After his wife completed their 2014 federal income tax form through the [REDACTED] software program, said program asked the couple if they desired information on financial help with their health insurance premium. Petitioner’s wife checked “yes,” which took her to the federally facilitated Marketplace. She answered additional questions at that website, but had no intention of applying for BCP.
5. In response to her Marketplace contact, the Marketplace mailed written notice to the petitioner on February 11, 2015. That notice advised the petitioner that he was “eligible to purchase health coverage through the Marketplace.” It did *not* say the he was or might be eligible or BCP, and did not say that additional action would be taken by the Wisconsin Department of Health Services (DHS).
6. DHS received an erroneous electronic transmission from the federal Marketplace, advising that the petitioner had applied for BCP. The agency processed a BCP application, and found the petitioner eligible for BCP (correct income information was not included in the communication). The agency issued an application case summary and BCP positive eligibility notice to the petitioner on February 24, 2015.
7. The petitioner did not intend to apply for BCP in February 2015. He disregarded all correspondence from the agency, such as the February 24 mailings and a letter requesting that he select an HMO (so, an HMO was selected for him by the Department). He did not use any BCP benefits during 2015.
8. The agency received a state wage match in April 2015, which showed earnings by the petitioner’s household in excess of 100% FPL. On February 2, 2015, the Department mailed a *Medicaid/BadgerCare Plus Overpayment Notice* to the petitioner, advising that he had been overpaid BCP of \$882 during the March 1, 2015 through May 31, 2015, period (claim # [REDACTED]). The petitioner appealed.

DISCUSSION

I.

BadgerCare Plus is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents. The program’s nonfinancial eligibility standards were broadened effective April 1, 2014, to include adults who do not have minor children in their home. Wis. Stat. § 49.45(23); 2013 Wisconsin Act 116, § 29, for effective date; *BadgerCare Plus Eligibility Handbook (BCPEH)*, § 2.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (viewed in April 2015). There is no dispute that the petitioner met the nonfinancial eligibility tests for the program.

The petitioner must also pass an income test. An eligible applicant cannot have adjusted gross income exceeding 100% of the federal poverty level (FPL). Wis. Stat. § 49.45(23)(a); *BCPEH*, § 16.1. The 100% FPL amount was \$16,020 annually for a household of two persons in 2014. *Id.*, § 50.1. The parties agree that the petitioner’s household of two did *not* meet the income test in 2014 or 2015.

A Marketplace application is considered to be a simultaneous application for either a private insurance premium subsidy, or state Medicaid/BC+. The BC+ eligibility determination is made first; if the

applicant is BC+ eligible, the Marketplace will not determine a premium subsidy. Here, the Marketplace determined on February 11 that the petitioner's household was *not* BC+ eligible in February 2015, and that the petitioner could shop in the Marketplace for a private policy.

For Medicaid "assessment states" such as Wisconsin, the Marketplace makes a guess as to each Medicaid applicant's eligibility, and routes applications that appear likely to qualify for Medicaid to the state for a final decision by the state on the person's eligibility. 45 C.F.R. § 155.302(b). Even though the petitioner had just filed a federal income tax return that clearly showed him to be ineligible for MA/BCP, the federal Marketplace inexplicably routed a BCP application for him to Wisconsin DHS for further decision-making. The result was the opening of the BCP case.

II.

The Department of Health Services (Department) is legally required to seek recovery of incorrect BCP payments when a recipient engages in a misstatement or omission of fact on a BCP application, or fails to report income information, which in turn gives rise to a BCP overpayment:

49.497 Recovery of incorrect medical assistance payments. (1) (a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s.49.665 if the incorrect payment results from any of the following:

1. *A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s.49.665.*

2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.

3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

(b) The department's right of recovery is against any medical assistance recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted. ...

(emphasis added)

Wis. Stat. §49.497(1). BCP is in the same subchapter as §49.497. See also, *BCP Eligibility Handbook (BCPEH)*, §28.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

Department policy then instructs the agency, in a "no eligibility" case, to base the overpayment determination on the actual MA/BCP charges paid. "Charges paid" includes a monthly HMO capitation fee. *BCPEH*, § 28.4.2.

At hearing, the petitioner did not deny that household income exceeded 100% FPL throughout the overpayment period. Rather, he argued that he never applied for BCP, made no subsequent misstatements to the Wisconsin agency, and never used the BCP benefit. He had no need for BCP because he had private health insurance. I believe the petitioner's credible testimony. The petitioner had just filed a tax return that showed he could not possibly be BCP-eligible (household earnings exceeding \$75,000). The Marketplace erred in sending an application to DHA.

The error was made by the Marketplace. The petitioner then took no affirmative steps to provide a “misstatement” to the agency—he did not sign a Wisconsin BCP application or renewal, did not contact the agency requesting benefits, did not pay a BCP premium, did not select an HMO, and did not use his BCP HMO card. Based on the hopefully unusual facts of this case, I conclude that this overpayment cannot be recovered.

CONCLUSIONS OF LAW

1. BCP benefits of \$882 were overpaid on the petitioner’s behalf in 2015; however, the overpayment was not caused by a misstatement or omission of fact by the household.
2. The Department shall not recover the 2015 overpaid BCP benefits of \$882 (claim # [REDACTED]).

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to cease all recovery efforts on claim # [REDACTED], within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

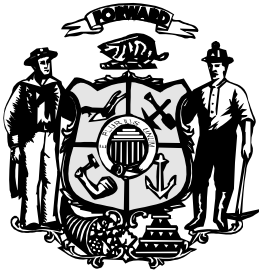
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 30th day of April, 2016

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 2, 2016.

Dane County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Attorney [REDACTED] [REDACTED]